F.M.S. REPORTS.

[APPELLATE CRIMINAL JURISDICTION]
PEDLOW, J.
April 10, 1937.

LEE YU FAH & 5 ORS.....Appellants.
vs.
PUBLIC PROSECUTOR.....Respondent.

[NEGRI SEMBILAN CRIMINAL APPEALS Nos. 4 to 9 of 1937]

Criminal procedure—plea of guilty—conviction — appeal — revisionary powers of appellate Court—charge—vagueness—sentence—consideration applicable—Criminal Procedure Code, Ss. 305, 323.

Where an accused person has been convicted by the Magistrate on his own plea of guilty under section 305 of the Criminal Procedure Code and is precluded from appealing against the legality of the conviction, the Appellate Court can always in a proper case exercise its powers of recision under Section 323 of the Code. It is impossible for any Judge to interpret section 305 of the Code actually literally until he is satisfied that the other provisions of the Code leading up to the acceptance of the plea of guilty have been complied with. It is most difficult for him to come to any opinion on this matter unless the trial Magistrate has fairly fully and fairly literally recorded the statement of the accused person in answer to the charge.

In a prosecution for unauthorised occupation of State land, the area of the land which an accused person is alleged to have occupied and the position of that land should be specified in sufficient detail in the charge.

A fine should seldom be so excessive as to ruin completely the persons on whom it is imposed and to make them mere outcasts in the country and potential criminals through the urge of necessity. The wealth and poverty of an accused are factors which should be considered on almost every occasion in assessing fines.

MAGISTRATE'S CRIMINAL APPEAL.

Jeff for the appellants.

Whitton, Deputy Public Prosecutor for the Respondent.

Cur. Ad. Vult.

PEDLOW, J.—This appeal has become a rather complicated matter and raises a number of legal points. The first one that I propose to deal with is the submission of the learned Deputy that as the Appellants have pleaded guilty no appeal lies, it being ruled out by the provisions of section 305 of the Criminal Procedure Code. The first thing I would say is that whether or not the Accused are legally entitled to appeal a Judge can always exercise his powers of revision under section 323 of the Criminal Procedure Code; but apart from that it seems to me that it is impossible for any Judge to interpret section 305 actually literally until he is satisfied that the other provisions of the Code leading up to the acceptance of the plea of guilty have been complied with. It is most difficult for a Judge to come to any opinion on this matter unless the Magistrate has recorded fairly fully and fairly literally the statement of the accused in answer to the charge. Here there is no statement of any kind; simply the record that all pleaded guilty. In a recent case of revision by the learned Chief Justice, Sir Samuel Thomas, during the sitting of the Court of Appeal at Ipoh last month, the Chief Justice emphasized once again what had been pointed out by different Judges, viz. that where an accused pleads guilty the Magistrate should record in writing just what the Accused said in answer to the charge. I would go further, and have gone further in a decision I gave in Selangor last year where I advised that where an Accused pleads guilty, in order to allow the appellate Judge to consider the question of sentence the statement from the Bar as to the facts of the case should be fully interpreted to the Accused by the Magistrate and the Accused should be asked whether he admits or denies the accuracy of that statement and his answer should be recorded. If he denies the accuracy evidence should be led on the disputed points. Unless these things are done it seems to me that the Judge will always be forced to fall back, if necessary, on his powers of revision in a case where an Accused has pleaded guilty and then wishes to withdraw that plea. It would appear now, from the evidence in the present case, that No. 1 accused was the real occupier of this land and that No. 2 Accused was his wife, who was in fact never at any time found on the land by the authorities, and that Nos. 3, 4, 5 and 6 Accused were—I won't say coolies—but friends of No. 1 and were employed and fed and paid by him to help him cultivate this land.

The case then against Accused No. 1 rests, I think, on a different basis from that against Nos. 2, 3, 4, 5 and 6 and it seems to me very clear from their evidence now that these five never gave and never intended to give an unrestricted plea of guilty to the charge against them. The four male accused Nos. 3 to 6 were certainly at least trespassing, but it is doubtful whether they could be brought under the section under which they were charged. The woman accused appears to have committed no offence at all. The Police exceeded the powers given to them in arresting these six people, and in particular there seems to have been no reason why No. 1 should have been placed in handcuffs if it be a fact—it is not admitted and we have only the Accused's statement—that he was so handcuffed. Under section 250 of the Land Code a summons only was issuable. So far as Nos. 2, 3, 4, 5, and 6 are concerned I allow their appeals and quash their convictions and sentences. In view of the peculiar circumstances of this case I allow their appeals to this Court to be free of charge. The whole matter of the arrest of these people seems to have arisen out of some confusion amongst subordinate officers as to what Government's policy with regard to them was. That confusion was unfortunate but it was possibly unavoidable

as a final decision in the matter had not apparently, been given at the time of the arrest.

I now come to the case of No. 1 Accused. It has been argued that the charge against him was so defective that his appeal should be allowed on that ground alone. I am not prepared to accept that argument. I admit I consider that the charge was defective. I think it should have specified in more detail the area of land which the Accused was alleged to occupy and also the position of that land. It is true that the land is stated to be at the 11th mile. That may mean a great deal or it may mean very little according to the nature of the country just around the 11th mile. But the Accused was arrested on a particular piece of land, and it seems to me impossible to come to the conclusion that he was not aware that the land in respect of which he was being charged was the land on which he had been arrested. I think then that, so far as the charge against No. 1 is concerned, the loose manner in which the charge was framed did not lend to any miscarriage of justice, except, possibly, in so far as the sentence was concerned. It seems to me most unfortunate that the Prosecuting Officer should have stated in Court that the Accused was in occupation of 40 acres when in fact it appears that he occupied some 5 acres only. Further I would recommend Officers when drafting charges to follow as closely as possible the actual wording of the Enactment. In this particular instance, the Enactment uses the word " unlawful " and the charge uses the word "unauthorised." The two words may in practice come to much the same thing, but it leaves an opening for argument and possibly for doubt. It is very advisable for Prosecuting Officers always to follow the exact wording of the Enactment under which they are proceeding and not to paraphrase that Enactment in their own words. So far as the 1st Accused is concerned it seems clear that he was in occupation of land to which he had at that time no legal right, and I cannot but think that he had sufficient notice that the authorities wished him to vacate that land. His conviction, therefore, must stand.

I come to the question of sentence. There are extenuating matters to be urged in his favour. It would appear that he had originally been allowed to come on this land by permission of a certain Penghulu. The Penghulu was not authorised to give that permission, but it looks as if 1st Appellant came on the land in all good faith; and, having spent time and money in clearing and cultivating the land, was naturally reluctant to leave it. The Government itself appears to have recognised these facts by now giving him a Temporary Occupation Licence.

I propose to reduce the amount of his fine very considerably, but before doing so, I want to make one or two general observations. I think I may say that of all the Magistrates in Malaya whose work has come to my notice, there is no Magistrate who, as a rule, imposes fines more in accordance with my own idea than the learned Magistrate who tried this particular case. His fines in small cases are usually considerably less than those of other Magistrates, and my own view is—although the question does not arise directly in this particular case—that the scale of fines imposed for minor offences in Malaya is too high. A man will often, so far as my experience goes, be fined $10/- here for an offence for which he would have been fined 5 shillings or 7*s.* 6*d.* at home.

In this particular case the learned Magistrate seems to have misdirected himself as to the considerations which should apply in determining the fine. That was not altogether his fault. He was informed that 40 acres were in dispute where in fact only 5 acres were in dispute. How far that would have modified the fine imposed I cannot say, but he allowed certain considerations to weigh with him which should not rightly have been brought into consideration in this matter. He seems to have been influenced, as he records himself, by the fact that there were about 88 prosecutions in his Court in 1936 for failure to renew temporary occupation licenses and to have overlooked the essential difference in this case; here the accused were perfectly willing to pay the Temporary Occupation Licence fees but the authorities were refusing to accept the fees from them. It is clear that the two types of case are not the same, and that the 88 prosecutions in the one type of case have no bearing on the entirely different facts of the other type.

Apart from that I was sorry to see in his Grounds of Judgment that he had allowed himself to come to the conclusion that there was no necessity to consider the wealth or poverty of the Accused in this case. My own view is that there can be very few cases indeed where the wealth or poverty of the Accused should not be taken into consideration in assessing fines. If a general principle can be laid down, I think it should be that a fine should seldom be so excessive as to ruin completely the people on whom it is imposed and to make them mere outcasts in the country and potential criminals through the urge of necessity. I am not saying that the fine of $70/- in this case had that effect: I have no information as to the wealth or poverty of the Accused. I merely wish to intimate that, in my opinion, wealth and poverty are factcrs which should be considered on almost every occasion in assessing fines.

I realise that very considerable trouble and a certain amount of expense are caused to Government each year by squatters who do not pay the fees for their Temporary Occupation Licences, and, although the present case is not on all fours

with those cases, I would not like anything I say to give the impression that it is a trivial offence unlawfully to occupy State land, however that occupation arises. I have confirmed the conviction on the 1st Accused, but in view of all the circumstances of this case I think that the law will be adequately upheld if he is fined $10/- only, and accordingly I reduce his fine from $70/- to one of $10/- with the alternative of a week's simple imprisonment.

Appeal against Appellants Nos. 2, 3, 4, 5 and 6 allowed; against Appellant No. 1 dismissed. Fine reduced.